

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

Civ. Act. No. 1:17-cv-2989 (AT)

**NON-PARTY ABRAMS FOR GOVERNOR’S RESPONSES AND
OBJECTIONS TO SUBPOENA TO PRODUCE DOCUMENTS,
INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF
PREMISES IN A CIVIL ACTION**

Pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure, non-party Abrams for Governor hereby objects and responds to the subpoena to produce documents, information, or objects or to permit inspection of premises in a civil action (the “Subpoena”), served by Defendants Brad Raffensperger, et al. (“Defendants”). Preliminarily, and consistent with their obligations under the Court’s rules, counsel for non-party Abrams for Governor and counsel for Defendants are engaged in a “meet and confer” process. These responses and objections are submitted prior to the completion of that process because the agreed-upon extended date for filing is Friday, July 19, 2019.

RESPONSES AND OBJECTIONS TO DOCUMENTS REQUESTED

Abrams for Governor responds to the numbered paragraphs of the Subpoena as follows:

1. All communications between you and any Plaintiff in the Lawsuit from January 1, 2017 to present.

RESPONSE:

Abrams for Governor objects to this request because it ignores the requirement in Rule 26(b)(1) of the Federal Rules of Civil Procedure that parties are to consider relative access to relevant information. In this case, Defendants seek information from a non-party that (if it exists) could be obtained through a discovery request to a party. As a result, it imposes undue burden and expense on a non-party. And, as Rule 26(b)(2)(C)(i) directs, the Court may limit discovery if it determines that the discovery “can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Finally, for objections based on Abrams for Governor’s nonparty-status, Rule 45(d)(1) of the Federal Rules of Civil Procedure commands that a party “must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” With the issuance of this subpoena, there has been no effort to avoid imposing undue burden or expense on non-party Abrams for Governor where the information that

Defendants seek, to the extent any responsive information exists, is readily available from a party before the Court.

Abrams for Governor further objects to this request as it seeks documents from a non-party that are not “relevant to any party’s claim or defense and proportional to the needs of the case” as Rule 26(b)(1) of the Federal Rules of Civil Procedure requires. More specifically, this is a case in which Plaintiffs allege that the “State of Georgia Defendants have delayed in grappling with the heightened critical cybersecurity issues . . . posed for the State’s dated, vulnerable voting system that provides no independent paper audit trail.” (ECF No. 309 at p. 2). Any communications that Abrams for Governor may—or may not—have had with Plaintiffs in the case before this Court do not meet the standard for the scope of discovery because they are not relevant and they are not proportional, the dual requirement that Rule 26(b)(1) of the Federal Rules of Civil Procedure imposes. Defendants can present no basis for believing that **any** communications are likely to lead to the discovery of relevant evidence, and, even if **some** such communications could be deemed relevant, Defendants’ entirely uncabined request for “[a]ll” communications sweeps in far more irrelevant information than discoverable information.

2. All contracts, agreements, or understandings, including but not limited to any joint prosecution agreement, potential joint prosecution agreement, or other

document evidencing legal collaboration, between You and any plaintiff in the Lawsuit.

RESPONSE:

Abrams for Governor objects to this request because it ignores the requirement in Rule 26(b)(1) of the Federal Rules of Civil Procedure that parties are to consider relative access to relevant information. In this case, Defendants seek information from a non-party that (if it exists) could be obtained through a discovery request to a party. As a result, it imposes undue burden and expense on a non-party. And, as Rule 26(b)(2)(C)(i) directs, the Court may limit discovery if it determines that the discovery “can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Finally, for objections based on Abrams for Governor’s nonparty-status, Rule 45(d)(1) of the Federal Rules of Civil Procedure commands that a party “must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” With the issuance of this subpoena, there has been no effort to avoid imposing undue burden or expense on non-party Abrams for Governor where the information that Defendants seek, to the extent any responsive information exists, is readily available from a party before the Court.

Abrams for Governor further objects to this request as it seeks documents from a non-party that are not “relevant to any party’s claim or defense and proportional to the needs of the case” as Rule 26(b)(1) of the Federal Rules of Civil Procedure requires. More specifically, this is a case in which Plaintiffs allege that the “State of Georgia Defendants have delayed in grappling with the heightened critical cybersecurity issues . . . posed for the State’s dated, vulnerable voting system that provides no independent paper audit trail.” (ECF No. 309 at p. 2). Any communications that Abrams for Governor may—or may not—have had with Plaintiffs in the case before this Court do not meet the standard for the scope of discovery because they are relevant and they are not proportional, the dual requirement that Rule 26(b)(1) of the Federal Rules of Civil Procedure imposes. Put simply, whether Abrams for Governor has any “contracts, agreements, or understandings” with the Plaintiff is fundamentally irrelevant to the underlying merits of either Plaintiffs’ claims or Defendants’ defenses.

3. All communications (a) between you and any counsel for any plaintiff in the Lawsuit that (b) addresses, concerns, relates to, or otherwise discusses the State of Georgia, the 2018 elections in Georgia, then Secretary of State Brian Kemp, Secretary Raffensperger, or any individual associated with the office of Georgia Secretary of State from January 1, 2017 to the present.

RESPONSE:

Abrams for Governor objects to this request because it ignores the requirement in Rule 26(b)(1) of the Federal Rules of Civil Procedure that parties

are to consider relative access to relevant information. In this case, Defendants seek information from a non-party that (if it exists) could be obtained through a discovery request to a party. As a result, it imposes undue burden and expense on a non-party. And, as Rule 26(b)(2)(C)(i) directs, the Court may limit discovery if it determines that the discovery “can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Finally, for objections based on Abrams for Governor’s nonparty-status, Rule 45(d)(1) of the Federal Rules of Civil Procedure commands that a party “must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” With the issuance of this subpoena, there has been no effort to avoid imposing undue burden or expense on non-party Abrams for Governor where the information that Defendants seek, to the extent any responsive information exists, is readily available from a party before the Court.

Abrams for Governor further objects to this request as it seeks documents from a non-party that are not “relevant to any party’s claim or defense and proportional to the needs of the case” as Rule 26(b)(1) of the Federal Rules of Civil Procedure requires. More specifically, this is a case in which Plaintiffs allege that the “State of Georgia Defendants have delayed in grappling with the heightened critical cybersecurity issues . . . posed for the State’s dated, vulnerable voting

system that provides no independent paper audit trail.” (ECF No. 309 at p. 2). Any communications that Abrams for Governor may—or may not—have had with Plaintiffs in the case before this Court do not meet the standard for the scope of discovery because they are relevant and they are not proportional, the dual requirement that Rule 26(b)(1) of the Federal Rules of Civil Procedure imposes. Defendants can present no basis for believing that **any** communications are likely to lead to the discovery of relevant evidence, and, even if **some** such communications could be deemed relevant, Defendants’ nominal attempt to restrict the request by targeting classes of communication uses sweepingly broad categories such as anything mentioning “Georgia” or “the 2018 elections,” and thus is not remotely proportional to the discovery needs.

4. All communications that evidence, refer, reflect or relate to any contracts, agreements, or understandings, including but not limited to any joint prosecution agreement, potential joint prosecution agreement or other document evidencing legal collaboration, between You and any plaintiff in the Lawsuit.

RESPONSE:

Abrams for Governor objects to this request because it ignores the requirement in Rule 26(b)(1) of the Federal Rules of Civil Procedure that parties are to consider relative access to relevant information. In this case, Defendants seek information from a non-party that (if it exists) could be obtained through a discovery request to a party. As a result, it imposes undue burden and expense on a

non-party. And, as Rule 26(b)(2)(C)(i) directs, the Court may limit discovery if it determines that the discovery “can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Finally, for objections based on Abrams for Governor’s nonparty-status, Rule 45(d)(1) of the Federal Rules of Civil Procedure commands that a party “must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” With the issuance of this subpoena, there has been no effort to avoid imposing undue burden or expense on non-party Abrams for Governor where the information that Defendants seek, to the extent any responsive information exists, is readily available from a party before the Court.

Abrams for Governor further objects to this request as it seeks documents from a non-party that are not “relevant to any party’s claim or defense and proportional to the needs of the case” as Rule 26(b)(1) of the Federal Rules of Civil Procedure requires. More specifically, this is a case in which Plaintiffs allege that the “State of Georgia Defendants have delayed in grappling with the heightened critical cybersecurity issues . . . posed for the State’s dated, vulnerable voting system that provides no independent paper audit trail.” (ECF No. 309 at p. 2). Any communications that Abrams for Governor may—or may not—have had with Plaintiffs in the case before this Court do not meet the standard for the scope of

discovery because they are relevant and they are not proportional, the dual requirement that Rule 26(b)(1) of the Federal Rules of Civil Procedure imposes. Further, because it is entirely irrelevant to the underlying merits of either Plaintiffs' claims or Defendants' defenses whether Abrams for Governor has any "contracts, agreements, or understandings" with the Plaintiffs, requiring Abrams for Governor to produce all communications in any way "relate[d] to" those purported contracts would be grossly disproportionate to Defendants' purported need for the information.

5. All communications that evidence, refer, reflect or relate to any defendant in the Lawsuit, or any other individual serving as Georgia Secretary of State since January 1, 2014, between you and any individual or entity for which an agreement of the type identified in Request No. 2 above exists. This Request does not seek production of any privileged documents.

RESPONSE:

Abrams for Governor objects to this request because, it ignores the requirement in Rule 26(b)(1) of the Federal Rules of Civil Procedure that parties are to consider relative access to relevant information. In this case, Defendants seek information from a non-party that (if it exists) could be obtained through a discovery request to a party. As a result, it imposes undue burden and expense on a non-party. And, as Rule 26(b)(2)(C)(i) directs, the Court may limit discovery if it determines that the discovery "can be obtained from some other source that is more convenient, less burdensome, or less expensive." Finally, for objections based on

Abrams for Governor’s nonparty-status, Rule 45(d)(1) of the Federal Rules of Civil Procedure commands that a party “must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” With the issuance of this subpoena, there has been no effort to avoid imposing undue burden or expense on non-party Abrams for Governor where the information that Defendants seek, to the extent any responsive information exists, is readily available from a party before the Court.

Abrams for Governor further objects to this request as it seeks documents from a non-party that are not “relevant to any party’s claim or defense and proportional to the needs of the case” as Rule 26(b)(1) of the Federal Rules of Civil Procedure requires. More specifically, this is a case in which Plaintiffs allege that the “State of Georgia Defendants have delayed in grappling with the heightened critical cybersecurity issues . . . posed for the State’s dated, vulnerable voting system that provides no independent paper audit trail.” (ECF No. 309 at p. 2). Any communications that Abrams for Governor may—or may not—have had with Plaintiffs in the case before this Court do not meet the standard for the scope of discovery because they are relevant and they are not proportional, the dual requirement that Rule 26(b)(1) of the Federal Rules of Civil Procedure imposes.

6. All communications that evidence, refer, reflect or relate to any Georgia election from January 1, 2014 to present, between you and any individual or entity

for which an agreement of the type identified in Request No. 2 above exists. This Request does not seek production of any privileged documents.

RESPONSE:

Abrams for Governor objects to this request because, it ignores the requirement in Rule 26(b)(1) of the Federal Rules of Civil Procedure that parties are to consider relative access to relevant information. In this case, Defendants seek information from a non-party that (if it exists) could be obtained through a discovery request to a party. As a result, it imposes undue burden and expense on a non-party. And, as Rule 26(b)(2)(C)(i) directs, the Court may limit discovery if it determines that the discovery “can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Finally, for objections based on Abrams for Governor’s nonparty-status, Rule 45(d)(1) of the Federal Rules of Civil Procedure commands that a party “must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” With the issuance of this subpoena, there has been no effort to avoid imposing undue burden or expense on non-party Abrams for Governor where the information that Defendants seek, to the extent any responsive information exists, is readily available from a party before the Court.

Abrams for Governor further objects to this request as it seeks documents from a non-party that are not “relevant to any party’s claim or defense and

proportional to the needs of the case” as Rule 26(b)(1) of the Federal Rules of Civil Procedure requires. More specifically, this is a case in which Plaintiffs allege that the “State of Georgia Defendants have delayed in grappling with the heightened critical cybersecurity issues . . . posed for the State’s dated, vulnerable voting system that provides no independent paper audit trail.” (ECF No. 309 at p. 2). Any communications that Abrams for Governor may—or may not—have had with Plaintiffs in the case before this Court do not meet the standard for the scope of discovery because they are relevant and they are not proportional, the dual requirement that Rule 26(b)(1) of the Federal Rules of Civil Procedure imposes.

7. All documents that evidence, refer, reflect or relate to any provision or exchange of resources, including but not limited to money, equipment, personnel, donor lists, or any other form of assistance or collaboration between You and any plaintiff in the Lawsuit since January 1, 2017 to present. This Request does not seek production of any privileged documents.

RESPONSE:

Abrams for Governor objects to this request because, it ignores the requirement in Rule 26(b)(1) of the Federal Rules of Civil Procedure that parties are to consider relative access to relevant information. In this case, Defendants seek information from a non-party that (if it exists) could be obtained through a discovery request to a party. As a result, it imposes undue burden and expense on a non-party. And, as Rule 26(b)(2)(C)(i) directs, the Court may limit discovery if it determines that the discovery “can be obtained from some other source that is more

convenient, less burdensome, or less expensive.” Finally, for objections based on Abrams for Governor’s nonparty-status, Rule 45(d)(1) of the Federal Rules of Civil Procedure commands that a party “must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” With the issuance of this subpoena, there has been no effort to avoid imposing undue burden or expense on non-party Abrams for Governor where the information that Defendants seek, to the extent any responsive information exists, is readily available from a party before the Court.

Abrams for Governor further objects to this request as it seeks documents from a non-party that are not “relevant to any party’s claim or defense and proportional to the needs of the case” as Rule 26(b)(1) of the Federal Rules of Civil Procedure requires. More specifically, this is a case in which Plaintiffs allege that the “State of Georgia Defendants have delayed in grappling with the heightened critical cybersecurity issues . . . posed for the State’s dated, vulnerable voting system that provides no independent paper audit trail.” (ECF No. 309 at p. 2). Any communications that Abrams for Governor may—or may not—have had with Plaintiffs in the case before this Court do not meet the standard for the scope of discovery because they are relevant and they are not proportional, the dual requirement that Rule 26(b)(1) of the Federal Rules of Civil Procedure imposes.

Simply put, whether Abrams for Governor has “exchange[d] resources” with Plaintiffs is fundamentally irrelevant to the merits of either Plaintiffs’ underlying claims or Defendants’ defenses.

Respectfully submitted this 19th day of July, 2019.

/s/ Kurt G. Kastorf

Kurt G. Kastorf (GA Bar No. 315315)

THE SUMMERVILLE FIRM, LLC

1226 Ponce de Leon Avenue, NE

Atlanta, GA 30306

Telephone: (770) 635-0030

kurt@summervillefirm.com

Dara Lindenbaum (*Pro hac vice* pending)

**SANDLER REIFF LAMB ROSENSTEIN
& BIRKENSTOCK, P.C.**

1090 Vermont Avenue, NW

Suite 750

Washington, DC 20005

Telephone: (202) 479-1111

lindenbaum@sandlerreiff.com

Counsel for Abrams for Governor

CERTIFICATE OF SERVICE

I hereby certify that on this the 19th day of July 2019, I caused to be electronically filed the foregoing Non-Party Abrams for Governor's Responses and Objections to Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing upon Counsel of Record:

Brian Edward Lake, Esq.

Joshua Barrett Belinfante, Esq.

Carey Allen Miller, Esq.

Vincent Robert Russo, Jr., Esq.

Kimberly Anderson, Esq.

Alexander Denton, Esq.

Robbins Ross Alloy Belinfante Littlefield, LLC -Atl

500 Fourteenth Street, NW

Atlanta, GA 30318

Email: blake@robbinsfirm.com

Email: jbelinfante@robbinsfirm.com

Email: cmiller@robbinsfirm.com

Email: vrusso@robbinsfirm.com

Email: kanderson@robbinsfirm.com

Email: adenton@robbinsfirm.com

Bryan P. Tyson, Esq.

Taylor English Duma LLP

1600 Parkwood Circle

Suite 200

Atlanta, GA 30339

Email: btyson@taylorenghish.com

Cary Ichter, Esq.

Ichter Davis LLC

3340 Peachtree Road N.E.

Suite 1530

Atlanta, GA 30326

Email: cichter@ichterdavis.com

Bruce P. Brown, Esq.

Bruce P. Brown Law LLC

1123 Zonolite Road

Suite 6

Atlanta, GA 30306

Email: bbrown@brucepbrownlaw.com

David D. Cross, Esq.

John P. Carlin, Esq.

Jane P. Bentrott, Esq.

Catherine L. Chapple, Esq.

Robert W. Manoso, Esq.

Morrison & Foerster, LLP

2000 Pennsylvania Ave. NW

Washington, DC 20006

Email: dcross@mofo.com

Email: cchapple@mofo.com

Email: jbentrott@mofo.com

Email: rmanoso@mofo.com

Email: jconway@mofo.com

Email: amiriyala@mofo.com

John Michael Powers, Esq.

David Brody, Esq.

Lawyers' Committee for Civil Rights Under Law

1500 K Street, N.W.

Suite 900

Washington, DC 20005

Email: jpowers@lawyerscommittee.org

Email: jbrody@lawyerscommittee.org

Kaye Burwell, Esq.

David Lowman, Esq.

Cheryl Ringer, Esq.

Office of The Fulton County Attorney

141 Pryor Street

Suite 4038

Atlanta, GA 30303

Email: kaye.burwell@fultoncountyga.gov

Email: david.lowman@fultoncountyga.gov

Email: cheryl.ringer@fultoncountyga.gov

Halsey G. Knapp, Jr., Esq.

Adam Martin sparks, Esq.

Krevolin & Horst, LLC

1201 West Peachtree Street, NW

One Atlantic Center, Suite 3250

Atlanta, GA 30309

Email: hknapp@khlawfirm.com

Email: sparks@khlawfirm.com

Robert Alexander McGuire

Robert McGuire Law Firm

113 Cherry Street #86685

Seattle, WA 98104

Email: ram@lawram.com

/s/ Kurt G. Kastorf

Kurt G. Kastorf

Georgia Bar No. 315315